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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,593

11/21/2005

Erik Esveld

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

02/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/535,593	<b>Applicant(s)</b> ESVELD ET AL.	
	<b>Examiner</b> Tony G. Soohoo	<b>Art Unit</b> 1797	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/21/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/21/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Claim interpretation**

1. Regarding "mixing means" of the independent claim, whereas the depending claims point out the physical structure of a pressure roll as the mixing means, evidence claim 5. The phrase has been read as not satisfying the requirement to invoke 35 USC 112, 6th paragraph. The scope of the meaning of "mixing means" is not limited to the further distinction of a pressure roll, and has been read, accordingly, in its broadest reasonable interpretation as any means which may provide mixing effect.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6, 8-11 are recites the limitation "those parts of the apparatus which will come into contact with the components" in claims 1 and 11. There is insufficient antecedent basis for this limitation in the claim. The claim has not pointed out and provided a clear recitation of "the parts" which come into contact such that one may determine "those parts" which contact and "those parts" that do not come into contact. Claim 4 has not pointed out "parts of the sold member surrounding the recess" in antecedent basis for "those parts of the solid member surrounding the recess. Claim 8 fails to provide proper antecedent basis for "the surroundings".

Claims 1-6 and 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

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which applicant regards as the invention. The claim is indefinite in the positive elements which touch the mixed components and those that do not.

4. Claims 1-6 and 8-11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the manner in which the foil material may operate as so as to be "which can be renewed" (especially claims 1 and 8, 9). The claim points to two successive mixing operation, however fails to point out what is operated in definition of a first mixing operation.

5. Regarding claims 1-6, and 8-11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 6, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hedenberg 4550653.

8. Hedenberg discloses a mixing device, figures 1, 5, 6, having a mixing chamber 12, 30, fig 6, made of foil, col. 3, line 53, having an inlet at 34, 34 an outlet at 37, col. 4, lines 10-21, and kneading means 13, 20, 32 which provides pressure. Regarding claim

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6, note that the mixing chamber is a thin elongate web of foil sheets which form a bag with provides a succession of internal cavity structures when squeezed by the rollers 20 and has an upper inlet and lower outlet when the bag foil structure is opened for feed or discharge of material, and may be renewed with a new foil bag in a successive mixing operation. The apparatus also has a support cavity, see housing of the device, such as in figure 1, and a means to move the elongate web bag to introduce and remove the bag from the housing. Regarding "renewing", note that a new bag is renewed as the chamber and material outlet is closed so that material maybe introduced for a repeated subsequent mixing operation.

9. Claims 1, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Lieberman 3681485.

10. Lieberman teaches an apparatus and method mixing having and utilizing an inlet between a container formed from the film foils 25/26 forming the opening near 83 (foil is read in its broadest ordinary meaning of a thin sheet of material), 84, an outlet to the right of the page, see arrow fig 1, and a mixing means which is the nip 83/84 in the form of a stationary pressure roll against the mixed components. The sheet film foils 25/26 are constantly reviewed for subsequent mixing of the component mixture in 37, 38

***Allowable Subject Matter***

11. Claims 3-5, and 10-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12.

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13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rogers 2406403, Koop 3391047, Cadogan et al 6837610, Ljungerg et al 3656716 and 3588054 all disclose the working of a flexible material forming a chamber. Kopp 3391047 forms successive chambers in a sheet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Tues-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/  
Primary Examiner, Art Unit 1797

Tony G Soohoo  
Primary Examiner  
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